

**THIS DECISION HAS BEEN APPEALED. THE
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

SOAH DOCKET NO. 453-04-2707.M5

MDR Tracking Number: M5-04-0299-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 10-01-03.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The physical performance tests, office visits, therapeutic exercises and activities limited to 2 per day were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

This Findings and Decision are hereby issued this 19th day of December 2003.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 11-07-02 through 05-22-03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 19th day of December 2003.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division
RL/dlh

December 9, 2003
Amended December 18, 2003

David Martinez
TWCC Medical Dispute Resolution
4000 IH 35 South, MS 48
Austin, TX 78704

MDR Tracking #: M5-04-0299-01
IRO #: 5251

___ has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to ___ for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

___ has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Doctor of Chiropractic. The reviewer is on the TWCC Approved Doctor List (ADL). The ___ health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to ___ for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

___ was emptying trash containers and slipped, falling to the ground, injuring his right shoulder. He was initially treated with conservative care to the injury, including active

and passive care. Later he was treated with surgery to the right shoulder by _____. _____ performed an arthroscopic subacromial decompression. The patient was referred to _____ who ordered a MRI and found a partial thickness tear of the rotator cuff on the right.

The patient was found not to be at MMI as of July 17, 2003. The patient was treated with active and passive care on follow-up after the initial surgery by _____.

DISPUTED SERVICES

The carrier has denied the medical necessity of physical performance tests, office visits, therapeutic exercises and activities.

DECISION

Therapeutic exercises, while reasonable, should be limited to 2 units per day. The reviewer disagrees with the prior determination for all other care rendered.

BASIS FOR THE DECISION

The reviewer agrees with the basis of the requestor's position statement that this patient was a more seriously injured individual that does not fit into a "one size fits all" category. However, in looking at the notes the requestor also apparently has performed therapy that is not appropriate for this case. Joint mobilization is a form of manipulation which is inappropriate for a tear of a rotator cuff, as is manual traction. There is no indication that manual traction was appropriate and would likely be contraindicated in most cases of this type. The remainder of the treatment would be reasonably considered a necessary treatment of a patient with this extent of injury. Therapeutic exercises should not be expected to require more than 2 units per day of treatment for a shoulder injury. The care on this case was extensive, but the patient was seriously injured and could be considered the benefactor of reasonable treatment for this specific case.

_____ has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. _____ has made no determinations regarding benefits available under the injured employee's policy

As an officer of _____, I certify that there is no known conflict between the reviewer, _____ and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

_____ is forwarding this finding by US Postal Service to the TWCC.

Sincerely,